

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 FEDERAL TRADE COMMISSION,

7 Plaintiff,

8 v.

9 CONSUMER DEFENSE, LLC, et al.,

10 Defendants.
11

Case No. 2:18-cv-00030-JCM-BNW

ORDER

12 Presently before the court is Defendant Jonathan Hanley's Motion to Quash Subpoena
13 (ECF No. 196), filed on March 12, 2019. The receiver who issued the subpoena responded (ECF
14 No. 197) on March 15, 2019. Mr. Hanley did not file a reply. Instead, Mr. Hanley filed a motion
15 for leave to amend his motion to quash with supplemental exhibits (ECF No. 200) on March 22,
16 2019, which is also presently before the court. The receiver responded (ECF No. 203) on April 5,
17 2019, and Mr. Hanley replied (ECF No. 204) on April 12, 2019.

18 **Background**

19 The parties are familiar with the facts of the case and the court will repeat them here only
20 as necessary.

21 American Home Loan Counselors (AHLIC) and Modification Review Board (MRB) are
22 co-defendants of Mr. Hanley's in this case. They are also in receivership. (*See* ECF No. 55 at 18
23 ("Thomas W. McNamara shall continue to serve as receiver of the Receivership Entities with full
24 powers of an equity receiver.")) At issue is a subpoena that the receiver issued to Parsons Behle
25 & Latimer PLC (Parsons), the firm that allegedly previously represented MRB and AHLIC, and
26 critically, also Mr. Hanley. The subpoena seeks the client files of MRB and AHLIC.

27 Mr. Hanley moves to quash this subpoena on the grounds that the client files of MRB and
28 AHLIC contain attorney-client privileged information. (ECF No. 196 at 2.)

1 The receiver responds that Mr. Hanley's motion should be denied on multiple grounds,
2 including that (1) Parsons jointly represented MRB, AHLC, and Mr. Hanley. And because of this
3 joint representation, the attorney-client privilege does not protect MRB and AHLC's files from
4 disclosure to the receiver; (2) even if Mr. Hanley's attorney-client privilege previously protected
5 the documents at issue, they have been disclosed to MRB and AHLC, so they are no longer
6 protected by the attorney-client privilege; and (3) Mr. Hanley did not properly meet and confer
7 with the receiver under the Local Rules before filing this motion. (*See* ECF No. 197.) The
8 receiver also requests that the court impose sanctions on Mr. Hanley for "frivolous" and "abusive
9 litigation conduct." (*Id.* at 5.)

10 As noted above, Mr. Hanley did not file a reply in support of his motion to quash but
11 instead filed a motion to amend his motion to quash with supplemental exhibits under LR 15-1.
12 (*See* ECF No. 200.) Mr. Hanley attached several engagement letters and emails to this motion that
13 he asserts "define the scope of the attorney client relationship." (ECF No. 200 at 1). Mr. Hanley
14 appears to suggest that Parsons never jointly represented MRB, AHLC, and himself. (*See id.*) He
15 writes that a "new engagement letter, which included receivership entities[,] was never entered
16 into by Hanley despite repeated requests from Parsons to execute. Parsons withdrew their
17 representation from Hanley when it became clear that Hanley did not intend for them to represent
18 MRB & AHLC (the entities identified in the subpoena)." (ECF No. 200 at 2.)

19 The receiver responded to Mr. Hanley's motion, arguing that it should be denied on
20 multiple grounds. (ECF No. 203.) The receiver argues that as a procedural matter, it was improper
21 for Mr. Hanley to file his motion for leave to amend. (*Id.* at 2.) Substantively, the receiver argues
22 that Mr. Hanley's new motion fails to establish that the receiver's subpoena should be quashed.
23 (*Id.*) This is so, accordingly to the receiver, because (1) a signed contract is not necessary under
24 Nevada law to create an attorney-client relationship; (2) Mr. Hanley's motion does not refute
25 what Parson's attorney Jeffrey Corey stated under oath – that Parsons understood itself to be
26 jointly representing Mr. Hanley and the two receivership entities; (3) Mr. Hanley's statement that
27 an unsigned engagement letter confirms that Parsons did not represent Mr. Hanley and the two
28 receivership entities is merely a legal interpretation from a non-lawyer; and (4) even if Parsons

1 never jointly represented Mr. Hanley and the receivership entities, the documents at issue have
2 already been disclosed to the receivership entities, so the attorney-client privilege has been
3 waived. (*Id.* at 3-5.)

4 Mr. Hanley's reply largely reiterates the points he made in his opening briefs. (*See* ECF
5 No. 204.)

6 DISCUSSION

7 A. Motion to Amend

8 Mr. Hanley moves to amend his motion to quash under LR 15-1. Local Rule 15-1,
9 however, discusses how to properly move to amend pleadings, not motions. Accordingly, Mr.
10 Hanley did not properly move under LR 15-1 to amend his motion to quash.

11 The court notes that parties may file supplemental briefs and/or evidence with leave of
12 court for good cause shown under Local Rule 7-2(g). Because Mr. Hanley is a *pro se* litigant, the
13 court considered whether he demonstrated good cause for the court to consider the additional
14 evidence submitted. The only explanation offered by Mr. Hanley for needing to supplement was
15 that it took "some time for the[] new exhibits to be discovered[,] . . . which were believed to have
16 been destroyed" (ECF No. 200 at 2.) This explanation is too vague for the court to find good
17 cause to allow Mr. Hanley to amend his motion; the court does not know why Mr. Hanley
18 believed the exhibits were destroyed or why it took additional time for the exhibits to be
19 discovered and whether a further explanation on either subject would demonstrate good cause.¹
20 Accordingly, the court denies Mr. Hanley's motion to amend his motion to quash (ECF No. 200).

21 B. Motion to Quash

22 Before parties file discovery motions, they must meet and confer in an attempt to resolve
23 their dispute. Under Rule 37(a)(1) of the Federal Rules of Civil Procedure, a discovery motion
24 must include a certification that the movant has in good faith conferred or attempted to confer
25

26
27 ¹ The court notes that in reviewing Mr. Hanley's motion to amend (ECF No. 200), it reviewed the attached
28 exhibits. Had the court found good cause to allow Mr. Hanley to amend his motion to quash, consideration
of these exhibits would not have changed the court's ruling on Mr. Hanley's motion to quash.

1 with the other party to resolve the dispute without court action. Fed. R. Civ. P. 37(a)(1).

2 Additionally, Local Rule 26-7(c) provides that:

3 Discovery motions will not be considered unless the movant (1) has made a good
4 faith effort to meet and confer as defined in LR IA 1-3(f) before filing the motion,
5 and (2) includes a declaration setting forth the details and results of the meet-and-
6 confer conference about each disputed discovery request.

6 Under LR IA 1-3(f), “to ‘meet and confer’ means to communicate directly and discuss in good
7 faith the issues required under the particular rule or court order.” “Unless these rules or a court
8 order provide otherwise, this requirement may only be satisfied through direct dialogue and
9 discussion in a face-to-face meeting, telephone conference, or video conference.” *Id.*

10 If parties properly meet and confer and cannot resolve their discovery disputes, they may
11 file discovery motions with the court. Such motions must contain legal authority supporting the
12 movant’s position. LR 7-2(a). “The failure of a moving party to file points and authorities in
13 support of the motion constitutes a consent to the denial of the motion.” LR 7-2(d).

14 Here, the court is concerned that Mr. Hanley did not comply with the meet and confer
15 rules cited above. Mr. Hanley states that he attempted to meet and confer with counsel for the
16 receiver (ECF No. 196 at 1), but counsel for the receiver declared under oath that Mr. Hanley
17 never attempted to meet and confer with him in accordance with the Local Rules, and he would
18 have been notified if Mr. Hanley reached out to someone else in his firm. (ECF No. 197-2 at ¶¶ 3-
19 4 (Bhandari Decl.)) None of the documents that Mr. Hanley attached to his motion to quash (or
20 motion to amend his motion to quash) call into question this sworn statement.

21 Additionally, Mr. Hanley did not comply with LR 7-2(a), as he did not cite authority in
22 support of his assertion that the subpoenaed documents are protected by the attorney-client
23 privilege. While the court reviewed the various engagement letters and emails that Mr. Hanley
24 attached to his motion to quash and his motion to amend, these are not a substitute for a detailed
25 legal analysis with citation to relevant authority. Mr. Hanley does not explain what law governs
26 the attorney-client privilege in this case (*e.g.*, Nevada law or other), when an attorney-client
27 relationship is formed under that law, or when a joint defense group is formed under that law.
28 Accordingly, the court denies Mr. Hanley’s motion to quash.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

8
90
1

3

4
5
6